



Bank of Houston

POST OFFICE BOX 8306 - HOUSTON, TEXAS 77288

Wm. P. Traylor
President

October 24, 1990

RECORDATION NO **17068** FILED 1023

OCT 30 1990 4:25 PM

INTERSTATE COMMERCE COMMISSION

0-303A035

Ms. Mildred Lee
Interstate Commerce Commission
12th and Constitution N. W. - Rm. 2303
Washington, D. C. 20423

RECORDATION NO **17068** FILED 1023

OCT 30 1990 12:15 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

Recordation of Lien
5 - Used Tank Cars
Jimmy F. Howell, M.D.
w/Bank of Houston

Our customer, Dr. Jimmy F. Howell has purchased another group of five used tank cars and we are enclosing the pertinent documents for your use in perfecting this lien for us:

Note Contract and

Security Agreement - Loan to Jimmy F. Howell, M.D.
Amt. - \$148,500 - Secured
by 5 Tank Cars - dated 9/18/90.

*653.5 Sumin
Suite A 852
Houston 77030*

Management Agreement - By and between Transportation Equipment, Inc., Weimar, Texas and Jimmy F. Howell, M.D. (owner)

We are also including copy of the Bill of Sale, and our Texas UCC-1 Financing Statement with the Secretary of State.

Again, we want to thank you for your helpfulness back in June when we had to file the first group of tank cars and we trust that this information is sufficient for your purposes this time. If not, please let us know and we will supply whatever you should need.

Sincerely,

W. P. Traylor
W. P. Traylor
President

*Bank of Houston
P.O. Box 8306
Houston TX 77288
WPT:oc*

NOTICE OF RECEIPT
OCT 30 12 15 PM '90

Interstate Commerce Commission
Washington, D.C. 20423

10/31/90

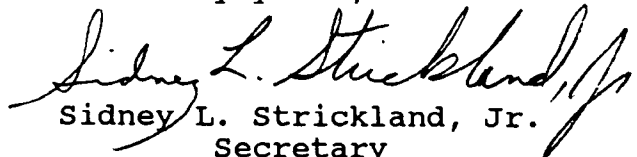
OFFICE OF THE SECRETARY

W.P. Taylor
President
Bank Of Houston
P.O.Box 8306
Houston, Texas 77288

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/31/90 at 12:25pm , and assigned recordation number(s). 17068 & 17068-A

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

OCT 30 1990 -12 5 PM

MANAGEMENT AGREEMENT

INTERSTATE COMMERCE COM.

This management agreement, ("Agreement"), made this 1st day of September, 1990, by and between TRANSPORTATION EQUIPMENT, INC., a Texas Corporation ("TEI") having its principal place of business in Weimar, Texas and Jimmy F. Howell, ("Owner").

W I T N E S S E T H

Whereas, Owner is the owner of the railway equipment listed in the attached Exhibit "A" (the "Railway Equipment"), and is desirous of entering into the following agreement with TEI, whereby TEI will manage the Railway Equipment pursuant to the terms and conditions hereof; and

Whereas, TEI is desirous of undertaking the management of the Railway Equipment pursuant to the terms and conditions hereof;

Now, therefore, in consideration of the premises and the mutual covenants and conditions set forth herein, the parties hereto agree as follows:

ITEM I - APPOINTMENT

1. Owner hereby appoints TEI to manage and otherwise supervise the operation of the Railway Equipment in the name of the Owner, or in the name of TEI, but for the account and on behalf of the Owner pursuant and subject to the terms and conditions set forth in this agreement.

2. TEI hereby accepts the appointment set forth in Paragraph 1 of this Item 1 and agrees to perform the duties and obligations set forth herein. Owner acknowledges and agrees that, whereas TEI has accepted the responsibility of managing the Railway Equipment, except as specifically set forth herein to the contrary or as provided by law, TEI shall have the sole function and operative judgement, to be exercised in a reasonable manner, for the leasing, operation and management of the Railway Equipment and for establishing and implementing policies and standards affecting the Railway Equipment or the operation, maintenance or repair thereof. TEI shall be entitled to rely upon written or oral instructions received from Owner as to any and all acts to be performed by TEI.

ITEM II - TEI'S RESPONSIBILITIES

In consideration of the management fee provided for hereunder, TEI agrees to utilize reasonable time and efforts to:

1. Collect the rental and service charges earned by the Railway Equipment ("the "Lease Fee") and to enforce the provisions of the Lease Agreement. Such duties shall not, however, be deemed to include the filing of a suit to collect such lease fees and other expenses, although TEI may elect to do so as its option but at the expense of Owner, subject to the provisions of Item VI hereof.

2. Use its best efforts to obtain leases for the Railway Equipment (including renewal options) and maintain the Railway Equipment under lease throughout the term of this agreement. TEI shall execute any such lease in the name of TEI but for the account and on behalf of the Owner.

3. Comply with the terms and conditions of any lease agreements to which the Railway Equipment is subject during the term hereof. It is understood, however, that before TEI shall be obligated to comply with any lease, such lease and/or amendments must be approved, in writing, by TEI.

4. Make all required registration and other filings with the Interstate Commerce Commission, the Association of American Railroads, the Department of Transportation and any other governmental or industry authority.

5. File applicable ad valorem and other tax returns and pay, from the lease fees or from funds advanced by Owner, all such taxes due, in accordance with the provisions of Item III, paragraph 3. TEI may, however, retain during each calendar year of the term of this agreement, an amount equal to three percent (3%) of the lease fees received during that calendar year to cover such taxes, but will, within ninety (90) days following the end of each calendar year, remit to Owner any amounts not required for such taxes.

6. Maintain adequate books and records sufficient to account properly for the lease fees, expenses and other such items applicable to the Railway Equipment.

7. Contract for or otherwise obtain all repair and/or maintenance work on the Railway Equipment considered necessary by TEI, such repair and/or maintenance work to be paid for by Owner, subject to the provisions of Item III, Paragraph 2.

8. Provide periodic reports to Owner on a quarterly basis (the "Quarterly Reports") which shall set forth the lease fees derived from the use of the Railway Equipment, as well as expenses incurred or that are reasonably foreseeable to be incurred in connection with the Railway Equipment. The Quarterly Reports shall be for the quarters ending March 31, June 30, September 30, and December 31, and will be delivered to Owner as promptly as is reasonably possible. Should the lease fees exceed the expenses incurred in connection with the Railway Equipment, payment of the excess (except for any amount retained under Paragraph 5 and this Paragraph 8 of Item II) shall accompany the Quarterly Reports. Should expenses (incurred or reasonably foreseeable) exceed the lease fees for the period in question, the Quarterly Report will set forth the amount to be remitted by Owner to TEI, if requested. It is understood that TEI shall be under no obligation advance funds for payment of the expenses, regardless of the results of the nonpayment thereof. It is further understood that TEI shall have the authority to retain portions of lease fees that exceed actual expenses incurred to cover future expenses that can be reasonably foreseen to exceed lease fees for the applicable future period or periods. Such retention of lease fees shall

be accomplished on a reasonable basis and in such a manner as to minimize the effect that such retention shall have on cash distributions, if any, made to Owner. No assessment for cash deficiencies shall be made to Owner, however, to the extent of unremitted mileage credits held by TEI.

9. Reasonably pursue any and all warranties or other claims against manufacturers, users, lessees, railroads and other parties on behalf of Owner. Such duties shall not, however, be deemed to include the filing of suit, although TEI may elect to do so at its option, but at the expense of Owner, subject to the provisions of Item VI.

ITEM III - OWNER'S RESPONSIBILITIES

1. Owner does hereby deliver and release to TEI the Railway Equipment for the management thereof by TEI, and TEI acknowledges delivery and receipt thereof.

2. Except as provided below, Owner shall be responsible for the payment of all expenses incurred in connection with the ownership of the Railway Equipment, including ad valorem and other taxes, freight, excess mileage equalization cost, storage, design changes and other modifications required by governmental or industry regulations or technological changes, deductibles under insurance policies, cleaning, other expenses, levies, or charges, including the management fees (as defined in Item VI hereof), incurred in connection with the Railway Equipment and the operation and leasing thereof (all of which shall hereinafter be sometimes collectively referred to as the "expenses") which are not paid for by Lessee. The expenses shall also include repair and maintenance work due to normal wear and tear (including running repairs, painting and periodic inspection costs), and insurance premiums as provided herein.

3. Owner agrees to pay a portion of the aggregate ad valorem, gross receipts, property, or similar taxes levied against all tank cars (including the Railway Equipment) managed or owned by TEI (the TEI Fleet) in an amount equal to the percentage which the lease fees (as defined in paragraph 1 of Item II) earned by the Railway Equipment are the gross rental and service charges earned by all rail cars in the TEI fleet.

4. If the lease fees (as defined in Paragraph 1 of Item II) earned by the Railway Equipment are less than the expenses incurred or reasonably foreseeable in connection with the operation and management of the Railway Equipment hereunder, TEI will so advise the Owner in the quarterly report provided for under Item II, paragraph 8 hereof including the amount of such deficiency and, if requested by TEI, Owner will remit to TEI within ten (10) days of receipt of the quarterly report the amount of such deficiency.

5. Owner agrees to cooperate fully with TEI and to provide all assistance reasonably requested by TEI to carry out its obligations hereunder. This shall include, subject to the provisions of Item VI hereof, full cooperation and assistance in any lawsuit or other similar

matter or proceeding before any court or agency.

ITEM IV - FEES

In consideration of the service of TEI hereunder, the Owner shall pay to TEI a management fee of ten percent (10%) of the lease fee collected for each railway car included in the Railway Equipment (the "Management Fee"). The Management Fee shall be deducted from the remittance due quarterly to Owner as otherwise provided herein.

ITEM V - ASSIGNMENT

This agreement is not assignable by either party except with the written consent of the other party, provided, however, (a) this agreement together with the Railway Equipment may be transferred by Owner to his estate, heirs, or devisee or to any purchaser at a sale where this agreement and the related Railway Equipment are sold so long as such sale complies with applicable federal or state securities laws and (b) may be assigned by TEI in connection with the merger or consolidation of TEI into another corporation or as part of the sale of substantially all of the assets of TEI.

ITEM VI - LITIGATION

TEI shall give written notice to Owner at least ten (10) days prior to the institution of legal proceedings by TEI or not more than ten (10) days after being served with process in any legal proceedings against TEI involving the Railway Equipment. Unless otherwise directed in writing by Owner, TEI may, at its option, institute or defend, in its own name or in the name of Owner, any and all legal actions or proceedings it considers necessary hereunder, including those to collect charges, rents, claims, or other income for the Railway Equipment or lawfully oust or dispossess lessees or other persons in possession thereof, or lawfully cancel, modify or terminate any lease, license or concession agreement for the breach thereof or default by a lessee, licensee or litigate to a final decision in any appropriate court of other forum any violation, order, rule, regulation, suit, claim, or other matter affecting the Railway Equipment. TEI shall keep Owner currently advised of all legal proceedings and Owner reserves the right to direct TEI to terminate any litigation brought pursuant to the foregoing authority.

ITEM VII - INDEMNIFICATION

Owner and TEI jointly and severally acknowledge, agree and covenant that TEI is entering into this contract as an independent contractor, and neither party hereto shall take any action to alter such legal relationship. Owner shall have no right or authority, and shall not attempt, to enter into contracts or commitments in the name, or on behalf of TEI, or to bind TEI in any manner or respect whatsoever. Further, Owner agrees to indemnify and hold TEI harmless from any and all claims, demands, causes of action (at law or in equity), costs, damages, reasonable attorney's fees, expenses and judgements, which may hereafter be asserted by any third party based on or relating to the

Railway Equipment or the operation, including the leasing, thereof, except for all claims, demands, causes of action (at law or in equity), costs, damages, reasonable attorney's fees, expenses and judgements which may hereafter be asserted by any third party based on or relating to actions taken by, or inactions were not authorized hereunder, were authorized hereunder but performed negligently, or were not specifically requested or approved by Owner; provided, that TEI shall indemnify and hold harmless the Owner from all claims, demands, causes of action (at law or in equity), damages, attorney's fees, expenses and judgements which may be asserted hereafter by any third party based on or relating to any of the aforesaid actions or inactions of TEI in connection with the Railway Equipment.

ITEM VIII - TERM

1. Subject to the provisions set forth herein, this agreement shall be effective September 1, 1990, and shall expire September 1, 1995.

2. Upon expiration of the original term, the Owner may terminate this agreement by giving TEI written notice of termination not less than three (3) months prior to the termination date designated in such notice; provided, however, if Owner shall owe TEI any amounts under this agreement, the Owner may not terminate this agreement as to any of the Railway Equipment until all such amounts have been paid. TEI shall, at its option, be entitled to continue to lease and otherwise operate and manage the Railway Equipment and retain any and all lease fees received therefrom until all amounts outstanding and/or subsequently incurred in connection with such continued leasing of the Railway Equipment have been paid.

3. Except as otherwise provided in Item VIII, Paragraph 4, should either party default under its obligations set forth herein, the sole and exclusive remedy of the other party shall be to advise the defaulting party of such default, and should such default not be corrected within thirty (30) days of such notification, the aggrieved party may, at its option, immediately terminate this agreement; provided, that the Owner shall (in addition to the foregoing) preserve and retain any rights the Owner might have at Law or in equity if TEI defaults in its obligations under Item II, Paragraph 9, or if TEI's actions constitute gross negligence or willful misconduct.

4. Neither TEI nor the Owner shall, by reason of the expiration or the termination of this agreement in accordance with the terms and provisions hereof, be liable to the other for compensation, reimbursement or damages, either on account of present or prospective profits or on account of expenditures, investments or commitments made in connection therewith or in connection with establishment, development or maintenance of the business or goodwill of TEI or the Owner, or on account of any other cause or thing whatsoever; provided however, that such expiration or termination shall not affect the rights or liabilities of the parties with respect to any indebtedness owing by either party to the other, and further provided, that such expiration or termination shall be subject to any then existing lease or leases of the

Railway Equipment, and TEI, at its option, shall be entitled to continue, pursuant to the terms and conditions of this agreement, the management and control of any of the Railway Equipment covered by such lease or leases as may be necessary for TEI to comply with such lease or leases, including the right to retain the lease fees, management fee and other sums as provided for herein, until the expiration or termination of such lease or leases. Except as may be otherwise expressly set forth herein, upon the expiration or termination of this agreement, all obligations of the parties shall immediately cease. TEI shall, however, provide reasonable assistance to Owner in transferring to Owner, all at Owner's expense and upon Owner's request, all records, data and other information relating to the Railway Equipment and in assisting Owner in the implementation of such records, data and information into Owner's operations.

ITEM IX - ADDENDUM

1. TEI shall maintain appropriate insurance coverage on the Railway Equipment and will charge Owner's account for TEI's per car cost for insurance premiums applicable to Owner's cars. Any additional insurance desired by Owner shall be obtained by Owner at Owner's expense.

2. Each party hereto shall promptly and duly execute and deliver to other party such further documents, assurances, releases and other instruments, and take such further actions, including any necessary filings and the execution of a power of attorney of Owner, as the other party may reasonably request, in order to carry out more fully the intent and purpose of this agreement and to indicate the ownership of the Railway Equipment during the continuance with the Railway Equipment.

3. It is understood that upon the expiration or termination of this agreement as to any or all of the Railway Equipment, Owner shall no longer be entitled to use the recordings and UMLER car initials and numbers and other designations (the "Designations") that are presently the property of TEI. Accordingly, Owner agrees that it will promptly undertake upon such expiration or termination, at Owner's expense, all steps necessary to change promptly the designations on the Railway Equipment no longer included under the agreement and to execute any and all documents requested by TEI to transfer to TEI any rights Owner may have acquired to such designations. TEI agrees to prepare at TEI's expense, documentation as, in its opinion, is necessary to change all designations on the Railway Equipment from the designations of TEI to those adopted by Owner, and to provide reasonable assistance to Owner, at Owner's expense, in the filing of such documents.

4. Any notice or other communication by either party to the other shall be in writing, and shall be deemed to have been duly given if either delivered personally, or mailed, postage prepaid, registered or certified mail, addressed as follows:

TEI: TRANSPORTATION EQUIPMENT, INC.
P. O. Box 775
Weimar, TX 78962

OWNER: Jimmy F. Howell
6535 Fannin
Mail Station A802
Houston, TX 77030

or to such other address, and to the attention of such other person or officer as either party may designate to the other in writing as provided by this paragraph.

5. The Owner or his authorized representative shall be entitled to inspect the books and records of TEI applicable to the Railway Equipment at any reasonable time during the office hours of TEI.

6. TEI hereby confirms that it will act as agent of Owner in entering into and performing all obligations and duties of the Lessor under any lease of the Railway Equipment and hereby assigns to Owner all rights of the Lessor under any such lease, including any rights to indemnification of the Lessor thereunder, provided, that such assignment shall not affect or modify the relationship between, or the respective rights, obligations, and duties of TEI and Owner pursuant to this agreement.

7. This agreement contains the entire agreement of the parties hereto pertaining to the management and operation of the Railway Equipment. Except as otherwise provided herein, this agreement may not be modified or amended, except by express, written agreement signed by both parties hereto. Any waiver of any obligation of either party hereto shall not be construed as a continuing waiver of any such obligation under any provision hereof.

8. The terms and provisions of this agreement shall be binding upon and inure to the benefit of, and be enforceable by the heirs, administrators, executors, successors and assigns, if any, of the parties hereto, subject to the provisions pertaining to the assignment hereof set forth in Item V.

9. This agreement shall be construed in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, the parties have hereunto set their names.

JIMMY F. HOWELL

TRANSPORTATION EQUIPMENT, INC.

By: 

By: 

DATED: 8-30-90

DATED: 8-30-90

EXHIBIT A

<u>CAR NUMBER</u>	<u>DATE BUILT</u>	<u>CAPACITY</u>	<u>PRESENT LESSEE</u>	<u>PRESENT RENTAL RATE</u>	<u>PRESENT LEASE EXP</u>
TEIX 2305	78	23,560	LUBRIZOL	\$475.00	6-01-93
TEIX 2306	78	23,590	LUBRIZOL	475.00	6-01-93
TEIX 2307	78	23,590	LUBRIZOL	475.00	6-01-93
TEIX 2308	78	23,640	LUBRIZOL	475.00	6-01-93
TEIX 2320	80	23,582	VELSICOL	485.00	11-01-92

ALL FIVE (5) CARS ARE DOT-111-A-100-W-3, EQUIPPED WITH TOP AND BOTTOM UNLOADING, EXTERIOR COILED AND INSULATED AND BOTTOM SKID PROTECTION.